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AMENDED IN SENATE AUGUST 6, 2008
AMENDED IN SENATE JULY 1, 2008
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CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 211

Introduced by Assembly Member Jones
(Coauthors: Senators ~~Kuehl~~ *Alquist, Kuehl*, and Torlakson)

January 25, 2007

An act to amend Section 56.36 of the Civil Code, ~~to add Section 101037 to, and to add~~ and Division 109 (commencing with Section 130200) to, the Health and Safety Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 211, as amended, Jones. Public health.

~~Existing law permits the establishment of the position of county health officer for the performance of various duties and powers relating to public health.~~

~~This bill would authorize the local health officer to provide assistance to cities and counties with regard to public health issues as they relate to local land use planning and transportation planning processes.~~

Existing law prohibits a health care provider, health care service plan, or contractor from disclosing medical information regarding a patient of the provider or an enrollee or subscriber of the health care service

plan without authorization, except as specified. Existing law makes it a misdemeanor to violate these provisions resulting in economic loss or personal injury to a patient, as specified. In addition, existing law authorizes administrative fines and civil penalties against any person or entity that negligently discloses, or knowingly and willfully obtains, discloses, or uses medical information in violation of these provisions, as specified. Existing law specifies the entities that may bring a civil action to recover civil penalties.

This bill would require every provider of health care, as defined, to ~~prevent the unlawful access, use, or disclosure~~ *implement appropriate specified safeguards to protect the privacy* of a patient's medical information. The bill would require every provider of health care to ~~monitor employees who have access to patient medical information, as specified, to ensure compliance. The bill would also require a provider to establish and maintain appropriate safeguards and policies to ensure the confidentiality and security of medical information, as specified~~ *reasonably safeguard confidential medical information from unauthorized or unlawful access, use, or disclosure*. The bill would establish within the California Health and Human Services Agency the Office of Health Information Integrity to assess and impose administrative fines for a violation of these provisions, as provided. The director would be appointed by the Secretary of California Health and Human Services. The bill would establish the Internal Health Information Integrity Quality Improvement Account for the deposit of funds derived from these penalties. Upon appropriation by the Legislature, the bill would authorize money in the account to be used to support quality improvement activities. The bill would also authorize the director to ~~make send a recommendation to the licensing authority of a health care provider for further investigation of, or discipline of the licensee, as specified, and to recommend that a civil action to collect penalties be commenced for, a potential violation to the licensee's relevant licensing authority.~~

This bill would provide that any costs created pursuant to this act associated with the implementation and operation of the Office of Health Information Integrity shall be funded through non-General Fund sources.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 56.36 of the Civil Code is amended to
2 read:

3 56.36. (a) Any violation of the provisions of this part that
4 results in economic loss or personal injury to a patient is punishable
5 as a misdemeanor.

6 (b) In addition to any other remedies available at law, any
7 individual may bring an action against any person or entity who
8 has negligently released confidential information or records
9 concerning him or her in violation of this part, for either or both
10 of the following:

11 (1) Nominal damages of one thousand dollars (\$1,000). In order
12 to recover under this paragraph, it shall not be necessary that the
13 plaintiff suffered or was threatened with actual damages.

14 (2) The amount of actual damages, if any, sustained by the
15 patient.

16 (c) (1) In addition, any person or entity that negligently
17 discloses medical information in violation of the provisions of this
18 part shall also be liable, irrespective of the amount of damages
19 suffered by the patient as a result of that violation, for an
20 administrative fine or civil penalty not to exceed two thousand
21 five hundred dollars (\$2,500) per violation.

22 (2) (A) Any person or entity, other than a licensed health care
23 professional, who knowingly and willfully obtains, discloses, or
24 uses medical information in violation of this part shall be liable
25 for an administrative fine or civil penalty not to exceed twenty-five
26 thousand dollars (\$25,000) per violation.

27 (B) Any licensed health care professional, who knowingly and
28 willfully obtains, discloses, or uses medical information in violation
29 of this part shall be liable on a first violation, for an administrative
30 fine or civil penalty not to exceed two thousand five hundred
31 dollars (\$2,500) per violation, or on a second violation for an
32 administrative fine or civil penalty not to exceed ten thousand
33 dollars (\$10,000) per violation, or on a third and subsequent
34 violation for an administrative fine or civil penalty not to exceed
35 twenty-five thousand dollars (\$25,000) per violation. Nothing in
36 this subdivision shall be construed to limit the liability of a health
37 care service plan, a contractor, or a provider of health care that is

1 not a licensed health care professional for any violation of this
2 part.

3 (3) (A) Any person or entity, other than a licensed health care
4 professional, who knowingly or willfully obtains or uses medical
5 information in violation of this part for the purpose of financial
6 gain shall be liable for an administrative fine or civil penalty not
7 to exceed two hundred fifty thousand dollars (\$250,000) per
8 violation and shall also be subject to disgorgement of any proceeds
9 or other consideration obtained as a result of the violation.

10 (B) Any licensed health care professional, who knowingly and
11 willfully obtains, discloses, or uses medical information in violation
12 of this part for financial gain shall be liable on a first violation, for
13 an administrative fine or civil penalty not to exceed five thousand
14 dollars (\$5,000) per violation, or on a second violation for an
15 administrative fine or civil penalty not to exceed twenty-five
16 thousand dollars (\$25,000) per violation, or on a third and
17 subsequent violation for an administrative fine or civil penalty not
18 to exceed two hundred fifty thousand dollars (\$250,000) per
19 violation and shall also be subject to disgorgement of any proceeds
20 or other consideration obtained as a result of the violation. Nothing
21 in this subdivision shall be construed to limit the liability of a
22 health care service plan, a contractor, or a provider of health care
23 that is not a licensed health care professional for any violation of
24 this part.

25 (4) Nothing in this subdivision shall be construed as authorizing
26 an administrative fine or civil penalty under both paragraphs (2)
27 and (3) for the same violation.

28 (5) Any person or entity who is not permitted to receive medical
29 information pursuant to this part and who knowingly and willfully
30 obtains, discloses, or uses medical information without written
31 authorization from the patient shall be liable for a civil penalty not
32 to exceed two hundred fifty thousand dollars (\$250,000) per
33 violation.

34 (d) In assessing the amount of an administrative fine or civil
35 penalty pursuant to subdivision (c), the Office of Health
36 Information Integrity, licensing agency, or certifying board or
37 court shall consider any one or more of the relevant circumstances
38 presented by any of the parties to the case including, but not limited
39 to, the following:

1 (1) Whether the defendant has made a reasonable, good faith
2 attempt to comply with this part.

3 (2) The nature and seriousness of the misconduct.

4 (3) The harm to the patient, enrollee, or subscriber.

5 (4) The number of violations.

6 (5) The persistence of the misconduct.

7 (6) The length of time over which the misconduct occurred.

8 (7) The willfulness of the defendant's misconduct.

9 (8) The defendant's assets, liabilities, and net worth.

10 (e) (1) The civil penalty pursuant to subdivision (c) shall be
11 assessed and recovered in a civil action brought in the name of the
12 people of the State of California in any court of competent
13 jurisdiction by any of the following:

14 (A) The Attorney General.

15 (B) Any district attorney.

16 (C) Any county counsel authorized by agreement with the
17 district attorney in actions involving violation of a county
18 ordinance.

19 (D) Any city attorney of a city.

20 (E) Any city attorney of a city and county having a population
21 in excess of 750,000, with the consent of the district attorney.

22 (F) A city prosecutor in any city having a full-time city
23 prosecutor or, with the consent of the district attorney, by a city
24 attorney in any city and county.

25 (G) The Director of the Office of Health Information Integrity
26 may recommend that any person described in subparagraphs (A)
27 to (F), inclusive, bring a civil action under this section.

28 (2) If the action is brought by the Attorney General, one-half
29 of the penalty collected shall be paid to the treasurer of the county
30 in which the judgment was entered, and one-half to the General
31 Fund. If the action is brought by a district attorney or county
32 counsel, the penalty collected shall be paid to the treasurer of the
33 county in which the judgment was entered. Except as provided in
34 paragraph (3), if the action is brought by a city attorney or city
35 prosecutor, one-half of the penalty collected shall be paid to the
36 treasurer of the city in which the judgment was entered and one-half
37 to the treasurer of the county in which the judgment was entered.

38 (3) If the action is brought by a city attorney of a city and
39 county, the entire amount of the penalty collected shall be paid to

1 the treasurer of the city and county in which the judgment was
2 entered.

3 (4) Nothing in this section shall be construed as authorizing
4 both an administrative fine and civil penalty for the same violation.

5 (5) Imposition of a fine or penalty provided for in this section
6 shall not preclude imposition of any other sanctions or remedies
7 authorized by law.

8 (6) Administrative fines or penalties issued pursuant to Section
9 1280.15 of the Health and Safety Code shall offset any other
10 administrative fine or civil penalty imposed under this section for
11 the same violation.

12 (f) For purposes of this section, “knowing” and “willful” shall
13 have the same meanings as in Section 7 of the Penal Code.

14 (g) No person who discloses protected medical information in
15 accordance with the provisions of this part shall be subject to the
16 penalty provisions of this part.

17 (h) Paragraph (6) of subdivision (e) shall only become operative
18 if Senate Bill 541 of the 2007–08 Regular Session is enacted and
19 becomes effective on or before January 1, 2009.

20 ~~SEC. 2. Section 101037 is added to the Health and Safety Code,~~
21 ~~to read:~~

22 ~~101037. The county local health officer may provide assistance~~
23 ~~to cities and counties with regard to public health issues as they~~
24 ~~relate to local land use planning and transportation planning~~
25 ~~processes. This assistance may relate to areas that include, but are~~
26 ~~not limited to, all of the following:~~

27 ~~(a) The prevention of obesity and chronic diseases, such as~~
28 ~~diabetes, some forms of cancer, arthritis and stroke in relation to~~
29 ~~physical activity, and issues of ease of walking and biking and~~
30 ~~vehicle miles traveled.~~

31 ~~(b) Respiratory disease and air quality.~~

32 ~~(c) Injury prevention and motor vehicle crashes.~~

33 ~~(d) Healthier eating opportunities and community design.~~

34 ~~(e) Drinking water quality.~~

35 ~~(f) Mental well-being and parks, trails, and open space.~~

36 ~~(g) Social capital and sense of community.~~

37 ~~(h) Violence prevention and street safety.~~

38 ~~SEC. 3.~~

39 ~~SEC. 2. Division 109 (commencing with Section 130200) is~~
40 ~~added to the Health and Safety Code, to read:~~

DIVISION 109. OFFICE OF HEALTH INFORMATION
INTEGRITY

130200. There is hereby established within the California Health and Human Services Agency the Office of Health Information Integrity to ensure the enforcement of state law mandating the confidentiality of medical information and to impose administrative fines for the unauthorized use of medical information. The Office of Health Information Integrity shall be administered by a director who shall be appointed by the Secretary of California Health and Human Services.

130201. For purposes of this division, the following definitions apply:

(a) “Director” means the Director of the Office of Health Information Integrity.

(b) “Medical information” means the term as defined in subdivision (g) of Section 56.05 of the Civil Code.

(c) “Office” means the Office of Health Information Integrity.

(d) “Provider of health care” means the term as defined in subdivision (j) of Section 56.05 and Section 56.06 of the Civil Code.

(e) “Unauthorized access” means the inappropriate review or viewing of patient medical information without a direct need for ~~medical~~ diagnosis, treatment, or other lawful use *as permitted by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) or by other statutes or regulations governing the lawful access, use, or disclosure of medical information.*

130202. (a) (1) Upon receipt of a referral from the State Department of Public Health, the office may assess an administrative fine against any person or any provider of health care, *whether licensed or unlicensed*, for any violation of this division in an amount as provided in Section 56.36 of the Civil Code. Proceedings against any person or entity for a violation of this section shall be held in accordance with administrative adjudication provisions of Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) *Paragraph (1) shall not apply to a clinic, health facility, agency, or hospice licensed pursuant to Section 1204, 1250, 1725,*

1 *or 1745 if Senate Bill 541 of the 2007–08 Regular Session is*
2 *enacted and becomes effective on or before January 1, 2009.*

3 ~~(2)~~

4 (3) Nothing in paragraph (1) shall be construed as authorizing
5 the office to assess the administrative penalties described in Section
6 1280.15 of the Health and Safety Code.

7 (b) The office shall adopt, amend, or repeal, in accordance with
8 the provisions of Chapter 3.5 (commencing with Section 11340)
9 of Part 1 of Division 3 of Title 2 of the Government Code, such
10 rules and regulations as may be reasonable and proper to carry out
11 the purposes and intent of this division, and to enable the authority
12 to exercise the powers and perform the duties conferred upon it
13 by this division not inconsistent with any other provision of law.

14 (c) Paragraph ~~(2)~~ (3) of subdivision (a) shall only become
15 operative if Senate Bill 541 of the 2007–08 Regular Session is
16 enacted and becomes effective on or before January 1, 2009.

17 130203. (a) Every provider of health care shall ~~prevent the~~
18 ~~unauthorized access or unlawful access, use, or disclosure of a~~
19 ~~patient's medical information. Every provider of health care whose~~
20 ~~employees have access to medical information shall monitor the~~
21 ~~electronic access to patient medical information to ensure~~
22 ~~compliance with this section. Every provider of health care shall~~
23 ~~establish and maintain appropriate administrative, organizational,~~
24 ~~technical, and physical safeguards, and policies and procedures to~~
25 ~~ensure the privacy, confidentiality, security, and integrity of~~
26 ~~medical information that is accessed, maintained, retained,~~
27 ~~modified, recorded, stored, destroyed, or otherwise used or~~
28 ~~disclosed.~~ *establish and implement appropriate administrative,*
29 *technical, and physical safeguards to protect the privacy of a*
30 *patient's medical information. Every provider of health care shall*
31 *reasonably safeguard confidential medical information from any*
32 *unauthorized access or unlawful access, use, or disclosure.*

33 (b) In exercising its duties pursuant to this division, the office
34 ~~may consider the provider's~~ *shall consider the provider's*
35 *capability, complexity, size, and history of compliance with this*
36 *section and other related state and federal statutes and regulations,*
37 *the extent to which the provider detected violations and took steps*
38 *to immediately correct and prevent past violations from*
39 *reoccurring, and factors beyond the provider's immediate control*
40 *that restricted the facility's ability to comply with this section.*

1 130204. The Internal Health Information Integrity Quality
2 Improvement Account is hereby created in the State Treasury. *All*
3 *administrative fines assessed by the office pursuant to Section*
4 *56.36 of the Civil Code shall be deposited in the Internal Health*
5 *Information Integrity Quality Improvement Account.*
6 *Notwithstanding Section 16305.7 of the Government Code, all*
7 *interest earned on the moneys deposited in the account shall be*
8 *retained in the account.* Upon appropriation by the Legislature,
9 money in the account shall be used for the purpose of supporting
10 quality improvement activities in the office. ~~Notwithstanding~~
11 ~~Section 16505.7 of the Government Code, all interest earned on~~
12 ~~the moneys deposited in the fund shall be retained in the fund.~~
13 ~~activities in the office.~~

14 ~~130205. When information comes to the attention of the~~
15 ~~director that a provider of health care has committed any act or~~
16 ~~omission that appears to constitute a violation of this division, the~~
17 ~~director shall send a recommendation to the licensing authority of~~
18 ~~the provider of health care for further investigation or discipline~~
19 ~~of the licensee.~~

20 130205. *Notwithstanding any other provision of law, the*
21 *director may send a recommendation for further investigation of,*
22 *or discipline for, a potential violation of this division to the*
23 *licensee's relevant licensing authority.* The recommendation shall
24 include all documentary evidence collected by the director in
25 evaluating whether or not to make that recommendation. The
26 recommendation and accompanying evidence shall be deemed in
27 the nature of an investigative communication and be protected by
28 Section 6254 of the Government Code. The licensing authority of
29 the provider of health care shall review all evidence submitted by
30 the director and may take action for further investigation or
31 discipline of the licensee.

32 SEC. 3. *Any costs created pursuant to this act associated with*
33 *the implementation and operation of the Office of Health*
34 *Information Integrity or the implementation of Division 109*
35 *(commencing with Section 130200) of the Health and Safety Code*
36 *shall be funded through non-General Fund sources.*